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STATINTL

Bruce Case Adjourns

Supreme Court Decision May Affect Obscenity Rap

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Lenny Bruce must be used to painful experiences by now, but probably few have been more excruciating for him than sitting through the performance last Wednesday of the prosecution's chief witness to date in the comedian's New York obscenity trial.

The witness was License Department Inspector Herbert S. Ruhe (pronounced, according to a License Department spokesman, Rooay). Ruhe is a dark, dapper little man with a mustache who looks like someone out of Damon Runyon—which is to say he gives the appearance of wearing a pin-striped suit even when he isn't. He is, according to the same License Department spokesman, a U. S.-educated Frenchman whose previous employment included a stint as a CIA agent in Viet Nam.

Ruhe testified that he went to the Cafe Au GoGo, where Bruce was appearing, on the night of March 31 with orders from his superiors in the License Department to make a physical inspection of the premises, to attend the entire performance, and to report whether any of it could be in violation of Section 1140A of the Penal Code (the section that covers obscene performances). A good portion of Ruhe's testimony was a description of Bruce's act based on notes the inspector had taken. But as Ruhe warmed to his role, the description became more of a performance in its own right until the proceedings began to resemble the audition of a Lenny Bruce impersonator for amateur night on the Ed Sullivan show.

The original Lenny Bruce all most walked out. (He later complained about Ruhe's delivery and said listening to him was like listening to "Ezra Pound reading the Bible.") When one of the judges asked Ruhe what was going, his attorney, Eph-

raim London, explained that his client wasn't feeling well. A recess was declared. (The comedian has been recovering from an attack of pleurisy. After Ruhe's day on the stand Bruce suffered a relapse and the trial was adjourned until June 30 to give him time to recover.)

Judge Smiles

That afternoon a tape of Bruce's April 7 performance at the Au GoGo was played to a packed house. Two of the three judges sat through it expressionless, the third judge smiled from time to time, and the spectators laughed out loud. (Bruce is being tried by a panel of three Criminal Court Judges—John M. Murtagh, James R. Creel, and Kenneth M. Phipps. Murtagh, the Administrative Judge of the Criminal Court, is presiding.)

During his cross-examination of Ruhe, which followed the playing of the tape, London stated that the four-letter word for sexual intercourse was one that most people learned in public school. "Not in the public school I went to!" Ruhe shot back indignantly. (At several points in his testimony Ruhe evidenced his distaste for four-, ten-, and twelve-letter words and was reluctant to pronounce them. Sometimes, with disdain, he would substitute euphemisms like "that fine word." Once he spent a moment or so pondering over whether "to come" is a transitive or intransitive verb.)

Range of Subjects

Both London and Allen Schwartz, attorney for Cafe Au GoGo owners Howard and Ella

Solomon, brought out the fact that Bruce's monologue dealt with a wide range of subjects, including politics, racial discrimination, and discussions of obscenity laws. London asked why Ruhe's notes contained precise references to words with sexual connotations, while they dismissed the political and social commentary in Bruce's monologue with brief parenthetical remarks or phrases like "philosophical claptrap." Ruhe replied that he noted down what he considered to be "key words." The defense attorneys also brought out the fact that Ruhe's report on Bruce's performance was incomplete since the inspector himself admitted that, not being a stenographer, he could not take verbatim notes. (Under the obscenity law a performance must be considered in its entirety before it can be judged obscene.) The defense also contended that Bruce used certain colloquial expressions as epithets rather than to describe sexual acts.

London requested that Ruhe's testimony be stricken on the grounds that it was incomplete and that the selection process used by Ruhe in his note-taking put the inspector's own characterization on Bruce's material. The motion was denied.

Since Bruce's trial was adjourned last week, there have been two developments that may affect its outcome. One, a decision by the Supreme Court of Illinois upholding Bruce's conviction by a Chicago court on obscenity charges, could have a negative effect on the defense case. (The case was carried with it a one-year prison sentence.)

However, a decision handed down by the United States Supreme Court on Monday could counteract the effect of the Illinois ruling. The Supreme Court decision, which found that the film "The Lovers" is not obscene, not only reaffirmed the community standard criterion for determining obscenity, but further defined this standard as a national one.

'Dominant Theme'

The test for obscenity, the decision stated, is "whether to the average person, applying contemporary community standards, the dominant theme of the material taken as a whole appeals to prurient interests." The decision went on to state that "the constitutional status of an allegedly obscene work must be determined on the basis of a national standard" since "it is, after all, a national Constitution we are expounding." In the light of this decision, it may be more difficult for the court to rely on expert testimony, since more than the reaction of an average member of a local community is required to determine a national standard.

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The decision also included a suggestion that state and local authorities "might well consider whether their objectives in this area would be better served by laws aimed specifically at preventing distribution of objectionable material to children rather than at totally prohibiting its dissemination." This dictum might have some bearing on the Bruce case since, according to Howard Solomon, customers' ages were checked at the door during Bruce's Au GoGo appearance in an effort to keep out minors.

Ephraim London handled the appeal of the "Lovers" case.

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